

22

Office - Supreme Court, U. S.  
FILED  
AUG 18 1943  
CHARLES ELMORE CROPLEY  
CLERK

No 27 1

IN THE

**In the Supreme Court  
of the United States**

In the Matter of

RALPH A. STILWELL

*Bankrupt*

In Bankruptcy  
No. 16461

**PETITION FOR WRIT OF CERTIORARI**

HARRY M. YOUNG, *Frank J. Militello, of Counsel,*  
*Attorney for Bankrupt,*

Office and Post Office Address,

State Bank Building,

Mayville, New York

## INDEX

---

	Page
Petition .....	1
Opinion Below .....	1
Basis of Jurisdiction .....	2
Question Presented .....	2
Summary Statement .....	2
Reason for Granting the Petition .....	5
Brief .....	8
Point I .....	9
Point III .....	12
Appendix — Opinion .....	13

---

## CASES CITED

*In re Neal*, 270 F 289;

*In re Silverman*, 157 F 675;

*In re McCarthy*, 170 F. 859;

*In re Scheffler*, 68 F. (2d) 902;

*In re Little*, 65 F (2d) 777.

# In the Supreme Court of the United States

---

1

In the Matter of

RALPH A. STILWELL

*Bankrupt*

In Bankruptcy  
No. 16461

Petition for Writ of Certiorari to the United States  
Circuit Court of Appeals for the Second Circuit

To the Honorable Chief Justice and Associate Justices 2  
of the Supreme Court of the United States :

Petitioners pray that a Writ of Certiorari issue to re-  
view the order of the Circuit Court of Appeals for the  
Second Circuit affirming the final order of the District  
Court of the United States for the Western District of  
New York entered on September 25, 1942.

## OPINION BELOW

The opinion of the Court below, filed on April 22, 1943 3  
is not yet reported and for convenience is printed in an  
appendix to a short brief filed with this petition, together  
with the mandate and the order on mandate and judg-  
ment.

*Petition*

## BASIS OF JURISDICTION

Jurisdiction is invoked under Section 240a of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938.

The opinion of the Circuit Court of Appeals for the Second Circuit was filed April 22, 1943 and the order on the mandate of the U. S. Circuit Court of Appeals was granted and entered on the 17th day of May, 1943.

## QUESTION PRESENTED

The fundamental question presented on this petition is whether the District Court sitting in Bankruptcy can deny the bankrupt's application for a discharge from his debts when he has brought his application to a hearing before the District Court, solely on the ground that the bankrupt had previously abandoned his application for discharge.

This question particularly involves Sec. 14, of the Bankruptcy Act as amended, relating to the granting of discharges and which does not specify abandonment as a ground for denying the bankrupt's discharge.

## SUMMARY STATEMENT

On November 10, 1930, Ralph A. Stilwell, was adjudicated a voluntary bankrupt in the United States District Court for the Western District of New York. The proceedings on Bankrupt's petition were referred to

*Petition*

Hon. Joseph C. White, now deceased, Referee in Bankruptcy of the Chautauqua and Cattaraugus Districts.

7

The first meeting of the creditors was held before said referee on December 5, 1930, but none of the present objecting creditors appeared.

Bankrupt's petition for a discharge, dated February 11, 1931, was filed with the Clerk of District Court at Buffalo, N. Y., on March 23, 1931, and thereupon an order issued out of District Court directing notice of discharge to be published and mailed to creditors. It does not appear that the notice provided for in this order was published or mailed to creditors at the time, although it is claimed by the bankrupt that he paid the required fees and disbursements at that time to Joseph A. Lazaroni, an attorney in the office of Harry M. Young, who was Attorney of Record for bankrupt.

8

The last act of the Referee in Bankruptcy, now deceased, in 1931, seems to be an order dated July 27, 1931, which recited that there was still owing a balance of \$22.56, the fees and expenses required to be paid on discharge, and the Order to Show Cause on Discharge was returned to the Clerk of the District Court with the recommendation that the matter be withheld until necessary disbursements were paid.

9

In July, 1940, bankrupt sought to obtain a copy of his discharge and the order of July 27, 1931 came to his attention, whereupon the \$22.56 was paid. The fol-

*Petition*

10      lowing day, July 13, 1940, a discharge was granted to the bankrupt by the District Court.

        In August, 1940, five creditors, obtained an order from District Judge John Knight, directing the bankrupt to show cause why the discharge should not be vacated and why the bankrupt's proceedings for a discharge should not be dismissed.

11      An order was granted August 27, 1940, revoking, vacating, and setting aside the discharge and proceedings for discharge instituted by the bankrupt on March 23, 1931, by petition dated February 11, 1931, were dismissed. Bankrupt appealed to the Circuit Court of Appeals from the latter order and the Court held that the discharge was properly set aside on the ground that the notice to creditors, required by statute, was jurisdictional, but reversed the order which dismissed the proceedings and remanded the case back to the District Court with directions to receive evidence either of prejudice to the creditors or of a deliberate determination by bankrupt to forsake the proceedings.

12      Back in District Court, notice to creditors was ordered and notice was duly published and mailed to creditors. The same five creditors appeared and filed objections to the discharge, setting forth three grounds, namely, (1) failure to keep books; (2) delay resulting in prejudice to creditors; and (3) abandonment by bankrupt of his application for discharge.

*Petition*

On the hearing on discharge the District Court dismissed the first two objections but sustained the objection that the bankrupt had abandoned his application for discharge. On September 25, 1942, an order was entered denying the application for discharge on the ground of abandonment by the bankrupt. 13

From this order the bankrupt appealed to the Circuit Court of Appeals, Second Circuit. On appeal to the Circuit Court it was contended by the appellant that the bankrupt did not abandon his application for discharge and was entitled to his discharge by virtue of section 14 of the bankruptcy act as amended. The Circuit Court of Appeals affirmed the order of the District Court of April 22, 1943, and an order of affirmance was duly granted and entered in the District Court on May 17, 1943. The bankrupt desires a Writ of Certiorari to review the order affirming the decision of the District Court. 14

## REASON FOR GRANTING THE PETITION

The Circuit Court of Appeals for the Second Circuit has decided an important question of Federal Law which has not been but should be settled by this court. 15

Section 14, subdivision (c) of the Bankruptcy Act as amended, provides as follows:

The court shall grant the discharge unless satisfied that the bankrupt has (1) committed an offense punishable by imprisonment as provided under this

*Petition*

- 16 Act; or (2) destroyed, mutilated, falsified, concealed or failed to keep or preserve books of account or records, from which his financial condition and business transactions might be ascertained, unless the court deems such act or failure to have been justified under all the circumstances of the case; or (3) obtained money or property on credit or obtained an extension or renewal of credit, by making or publishing or causing to be made or published in any manner whatsoever, a materially false statement in writing respecting his financial condition or (4) at any time subsequent to the first day of the twelve months immediately preceeding the filing of the
- 17 petition in bankruptcy transferred, removed, destroyed, or concealed or permitted to be removed, destroyed or concealed any of his property with intent to hinder, delay or defraud his creditors; or (5) has within six years prior to bankruptcy been granted a discharge or had composition or an arrangement by way of composition or a wage earner's plan by way of composition confirmed under this Act; or (6) in the course of a proceeding under this act refused to obey any lawful order of or to answer any material question approved by the court; or (7) has failed to explain satisfactorily any loss of assets or deficiency of assets to meet his liabilities; Provided, that if upon hearing of an objection of the court that
- 18 the objector shall show to the satisfaction of the court that there are reasonable grounds for believing that the bankrupt has committed any of the acts which under this subdivision (c), would prevent his discharge in bankruptcy then the burden of proving that he has not committed any of such acts shall be upon the bankrupt.



*Petition*

The said Circuit Court of Appeals by its affirmance of the decision of the District Court, decided that even though a bankrupt has complied with all of the provisions of the Bankruptcy Act and even though he has brought his application for a discharge to a hearing and been examined, could be denied a discharge on a ground not specified in section 14, of the Bankruptcy Act as amended. 19

The decision of the lower court was based solely on the theory that the bankrupt abandoned the proceedings. This has the effect of adding a new ground on which to deny the bankrupt his discharge in bankruptcy thereby extending the provisions of section 14 (c) of the Act. 20

It is respectfully submitted that the grounds for objection to a discharge are statutory and exclusive and the bankrupt should not be denied his discharge on a ground not specified in this section of the Act.

Wherefore, it is respectfully submitted that this petition for Writ of Certiorari to review the Judgment of the Circuit Court of Appeals for the Second Circuit should be granted. 21

HARRY M. YOUNG,  
*Attorney for Petitioner,*  
Office and Post Office Address,  
Mayville, New York